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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 United States of America,) No. CIV-05-540-TUC-GEE
10 Plaintiff-Respondent,) Mag. 05-4853-TUC-GEE
11 vs.)
12 Arthur D'Amario, III,) **REPORT AND
13 Defendant-Movant.) RECOMMENDATION**
14 _____)

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16 On August 25, 2005, Arthur D'Amario, III, an inmate currently confined at the United
17 States Medical Center, Springfield, Missouri, filed the instant Motion to Vacate, Set Aside or
18 Correct Sentence pursuant to Title 28, United States Code, Section 2255. [doc. #28]¹ The
19 government filed a response, and D'Amario filed a reply.

20 This matter was originally assigned to Magistrate Judge Velasco. Judge Velasco
21 transferred the matter to Magistrate Judge Edmonds. Judge Edmonds has prepared a report and
22 recommendation which is now submitted to a District Court Judge chosen by lot under the
23 Clerk's direction – the Honorable Frank R. Zapata. The Magistrate Judge recommends the
24 District Court, after its independent review of the record, enter an order dismissing the motion.
25 In the alternative, the motion should be transferred to the U.S. District Court for the District of
26 Rhode Island. This court is without jurisdiction to entertain the motion.

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28 ¹ Criminal case record number.

1 Summary of the Case

2 On March 10, 2000, D'Amario was sentenced in the United States District Court for the
 3 District of Rhode Island to 18 months' imprisonment followed by a three year term of
 4 supervised release for felon in possession of a firearm. (Response, Exhibit 1.) On April 9,
 5 2002, he was sentenced in the United States District Court for the District of New Jersey to 27
 6 months' imprisonment (later changed to 21 months') followed by a three year term of
 7 supervised release for threatening a federal judge. *Id.* This second case was transferred to
 8 Rhode Island where the two sentences were administered jointly. *Id.*

9 The Rhode Island District Court later revoked D'Amario's supervised release, and on
 10 September 30, 2003, sentenced D'Amario to eleven months imprisonment and 25 months of
 11 supervised release, all terms to run concurrently for each case. *Id.* On November 9, 2004, the
 12 court amended D'Amario's conditions of release and directed him to participate in a community
 13 corrections program after a period of courtesy supervision in the District of Arizona. *Id.*
 14 D'Amario resided in Arizona with the court's permission until March of 2005 when the court
 15 instructed D'Amario to report to Coolidge House in Boston by March 30, 2005. *Id.* D'Amario
 16 failed to appear as directed, and the court issued a warrant for D'Amario's arrest. *Id.*

17 D'Amario was arrested in the District of Arizona and ordered detained pending his
 18 removal hearing. (Response, p. 4.) D'Amario objected to his detention and moved for a
 19 preliminary hearing. *Id.* Magistrate Judge Edmonds denied D'Amario's motion to reopen his
 20 detention hearing. *Id.* Judge Edmonds also denied D'Amario's motion for a preliminary
 21 hearing and transferred him to the District of Rhode Island. *Id.*; See FED.R.Crim.P.
 22 32.1(a)(5)(B). On June 14, 2005, the Rhode Island court revoked his supervised release and
 23 sentenced him to 12 months' imprisonment followed by a term of 13 months supervised release.
 24 [doc. # 462, District of Rhode Island] D'Amario is currently confined at the United States
 25 Medical Center, Springfield, Missouri. (Motion.)

26 On August 25, 2005, D'Amario filed in the District of Arizona the instant Motion to
 27 Vacate, Set Aside or Correct Sentence pursuant to Title 28, United States Code, Section 2255.
 28 (Motion.) He argues he is entitled to relief on the following grounds: (1) counsel failed to

1 appeal the Magistrate Judge's order of removal, (2) United States Probation Officer Brian
2 Pletcher lied to his counsel, (3) the judges in Rhode Island are biased against the defendant, and
3 (4) the government knowingly misrepresented the defendant's record. *Id.*

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5 Discussion

6 Collateral relief from a federal sentence is available pursuant to 28 U.S.C. § 2255 which
7 reads in pertinent part as follows:

8 A prisoner in custody under sentence of a court established by Act of Congress
9 claiming the right to be released upon the ground that the sentence was imposed
10 in violation of the Constitution or laws of the United States, or that the court was
11 without jurisdiction to impose such sentence or that the sentence was in excess
of the maximum authorized by law or is otherwise subject to collateral attack *may move the court which imposed the sentence* to vacate, set aside or correct the
sentence.

12 28 U.S.C. § 2255 (emphasis added). The prisoner is specifically instructed to direct his motion
13 to "the court which imposed the sentence." *Id.*

14 In this case, D'Amario objects to actions taken in the Arizona District Court that
15 ultimately lead to his sentence of 12 months in the District of Rhode Island. His motion,
16 however, was not filed in "the court which imposed the sentence" – the Rhode Island District
17 Court. The Arizona District Court is without jurisdiction to overturn a sentence imposed by the
18 Rhode Island District Court. This motion must be filed in that court. 28 U.S.C. § 2255;
19 *Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000).

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21 RECOMMENDATION

22 The Magistrate Judge recommends that the District Court, after its independent review
23 of the record, enter an order

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25 DISMISSING the Motion to Vacate, Set Aside or Correct Sentence pursuant to Title 28,
26 United States Code, Section 2255. [#28] This court is without jurisdiction to entertain the
27 motion. In the alternative, the case may be transferred to the District of Rhode Island pursuant
28 to 28 U.S.C. § 1631. See *Hernandez v. Campbell*, 204 F.3d 861, 865 n. 6 (9th Cir. 2000).

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3 Pursuant to FED.R.CRM.P. 59 (b)(2), any party may serve and file written objections
4 within 10 days of being served with a copy of this report and recommendation. If objections
5 are not timely filed, they may be deemed waived.

6 The Clerk is directed to send a copy of this report and recommendation to all parties.

7 DATED this 10th day of February, 2006.

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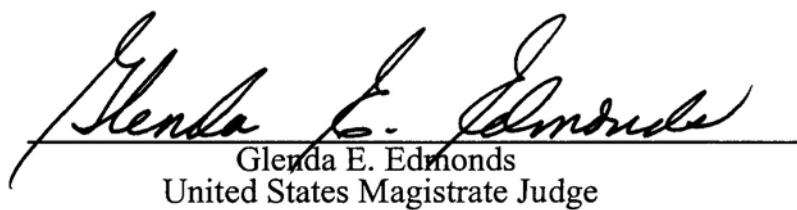
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A handwritten signature in black ink, appearing to read "Glenda E. Edmonds". The signature is fluid and cursive, with "Glenda" on top, "E." in the middle, and "Edmonds" on the bottom right.

Glenda E. Edmonds
United States Magistrate Judge